

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION**

LT. GOV. PHIL BRYANT et al.,)	
)	
Plaintiffs,)	
)	
v.)	
)	Civil Action No. 2:10-cv-76-KS-MTP
ERIC H. HOLDER, JR., in his official capacity)	
as Attorney General of the United States, et al.,)	
)	
Defendants.)	
_____)	

**MOTION FOR LEAVE TO FILE DEFENDANTS' MOTION TO DISMISS AND
SUPPORTING MEMORANDUM**

Defendants, through undersigned counsel, hereby respectfully request that this Court grant leave to file defendants' Motion to Dismiss and supporting memorandum on or before Monday, August 2, 2010, rather than on the previously-set deadline of Friday, July 30, 2010. Undersigned counsel was not able to timely file defendants' Motion to Dismiss on July 30 because the Court's ECF system was out of service at the time she attempted to file, and was scheduled to remain out of service until the morning of Monday, August 2. As indicated in the attached Declaration of Technical Difficulties, undersigned counsel attempted to access the Court's ECF system at approximately 7:30 p.m. on July 30 but discovered that the system was inaccessible. Although the system outage was apparently planned in advance, in order to upgrade the servers, undersigned counsel was not aware of the planned outage until it had already begun and was therefore unable to file by ECF prior to 6 p.m. or to make alternative arrangements with local counsel. When undersigned counsel learned of the system outage, she promptly attempted to contact local counsel for assistance and, when unable to reach him, notified the Court and plaintiffs' counsel by e-mail that

she would be unable to timely file defendants' Motion to Dismiss, but that she would file the Motion and supporting memorandum as soon as the Court's ECF system resumed service on Monday morning, August 2, 2010.¹ Because the ECF system has resumed service earlier than scheduled, defendants are able to file their Motion to Dismiss and supporting memorandum on August 1, 2010. Defendants therefore respectfully request that the Court grant leave to file nunc pro tunc and accept defendants' Motion to Dismiss and supporting memorandum as filed through ECF, or as attached hereto.

DATED this 1st day of August, 2010.

Respectfully submitted,

TONY WEST
Assistant Attorney General
IAN HEATH GERSHENGORN
Deputy Assistant Attorney General
DON BURKHALTER
United States Attorney

/s/ Kathryn L. Wyer
JENNIFER R. RIVERA
Director
SHEILA M. LIEBER
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¹The Court's manual of Administrative Procedures for Electronic Case Filing indicates that where the Court's website "is unable to accept filings continuously or intermittently over the course of any period of time greater than one hour after 12:00 noon that day, . . . filings due that day which were not filed due solely to such technical failures shall become due the next business day." Manual at 16. However, defendants are not entirely certain whether this rule applies when the system outage was scheduled in advance, as this one apparently was. Out of an abundance of caution, defendants therefore seek the Court's leave to file their Motion to Dismiss up to one business day after the previously-set deadline of July 30, 2010.

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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served via ECF on counsel of record for plaintiffs in the above-captioned case.

Dated: August 1, 2010

/s/ Kathryn L. Wyer
Kathryn L. Wyer